U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street - Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)

Issue Date: 28 September 2005

Case Nos.: 2004–LHC–02574 and 2004–LHC–02575

OWCP Nos.: 18–82850 and 18–83349

In the Matter of:

EUGENE PONCE,
Claimant

v.

CENTENNIAL STEVEDORING SERVICES and YUSEN TERMINALS, INC.,
Employers,

HOMEPORT INSURANCE Co.,
Carrier for Centennial Stevedoring Services, and

SIGNAL MUTUAL INDEMNITY ASSOC.,
Carrier for Yusen Terminals, Inc.

Appearances: Diane Middleton, Esq.
For the Claimant

Daniel Valenzuela, Esq.
For Respondent Centennial Stevedoring and Homeport

James Aleccia, Esq.
For Respondent Yusen Terminals and Signal Mutual

Before: Russell D. Pulver
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

This proceeding arises from a claim for compensation brought under the Longshore and Harbor Worker's Compensation Act, as amended, 33 U.S.C. § 901 et seq. ("the Act"). The Act provides compensation to certain employees (or their survivors) engaged in maritime employment for occupational diseases or unintentional work-related injuries, regardless of fault, occurring on the navigable waterways of the United States or certain adjoining areas, resulting in disability or death. Claimant Eugene Ponce ("Claimant") brought this claim against employer Centennial Stevedoring Services and its insurer Homeport Insurance (together "Centennial");

and employer Yusen Terminals, Inc. and its insurer Signal Mutual Indemnity Assoc. (together "Yusen").

Claimant seeks permanent partial disability compensation from Centennial for binaural work-related hearing loss of 50.83%. Centennial seeks a finding that the audiogram presented by Claimant fails to conform to the Act, relieving it of liability. If it is liable, Centennial seeks credit on money previously paid to Claimant for his disability. Yusen seeks a finding that it is not the responsible employer. If it is found liable, Yusen seeks credit for money previously paid to Claimant for his disability and relief from the Special Fund under section 908(f) of the Act.

On August 24, 2004, the District Director of the Office of Worker's Compensation Programs ("OWCP") referred this case to the Office of Administrative Law Judges ("OALJ"). Thereafter, the Chief Administrative Law Judge assigned the case to me and I accepted jurisdiction. On May 16, 2005, I convened a formal hearing in Long Beach, California, at which time the parties had a full and fair opportunity to present evidence and arguments. I admitted into evidence: ALJ Exhibits 1–5; Claimant's Exhibits ("CX") 1–2; Yusen's Exhibits ("YX") 1–13; and Centennial's Exhibits ("RX") 1–6, 8–10, and 12–15. Only Claimant testified at the hearing.

The findings and conclusions which follow are based on a complete review of the record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent precedent.

STIPULATIONS

The parties stipulate and I find:

1. Jurisdiction exists under the Act.

2. Claimant's notice and claim were both timely.

3. Claimant's last day of work prior to the January 4, 2004 audiogram was for Centennial on December 30, 2003.

4. Claimant's last day of work prior to the March 4, 2004 audiogram was for Yusen on February 27, 2004.

5. The employers timely controverted the claim.

6. Claimant's average weekly wage on the date of injury was $2,611, producing compensation at the maximum rate of $1,030.78[1].

7. At all relevant times and for both employers, Claimant worked as a marine clerk at Terminal Island, Berth 214.

[1] *See* 33 U.S.C. § 910.

ISSUES

1. Whether the January 4, 2004 audiogram is a presumptive determination of Claimant's hearing loss under the Act.

2. The extent of Claimant's hearing loss under the Act.

3. Which employer is responsible for Claimant's increased hearing loss.

4. The amount of the credit due to the responsible employer for money paid to Claimant on the prior claim.

5. Whether Claimant is entitled to interest.

FINDINGS OF FACT

Claimant's Work History and Noise Exposure

Claimant was born on April 8, 1939. Hearing Transcript ("Tr.") at 33. Claimant began work as a longshoreman in 1970. Tr. at 34. For the past six years he worked as a marine clerk for the Pacific Maritime Association ("PMA") with various employers. YX at 180–236. For the past four or five years, Claimant most often worked at Terminal Island, Berth 214. Tr. at 35–36. During January 2004, Centennial turned over operation of Terminal Island to Yusen. YX at 218.

Although the PMA records indicate that Claimant specifically worked as a computer kitchen tower clerk for most of 2003 and 2004, Claimant testified that he was actually a gate clerk during that time. YX at 213–20 and Tr. at 43. Claimant testified that kitchen tower clerks were not exposed to noise, but that gate clerks were. Tr. at 43. During this work, Claimant testified to noise exposure from: metal-to-metal noise due to crane operations and the movement of containers, the noises associated with trucks, the movement of scrap metal within a nearby facility, and the grinding of that metal. Tr. at 36–37 and 44.

In 2003, noise exposure at these jobs caused Claimant's hearing loss for which he filed an OWCP claim against Centennial ("the prior claim"). YX at 49–87. On August 28, 2003, parties settled that claim for $64,050.44, $2,500 in medical expenses, and $3,700 in attorney fees. YX at 53–55. Additionally, the parties agreed to place a lien of $3,700 on Claimant's recovery for the payment of attorney fees. YX at 55. The parties compromised between Dr. Cantor's October 8, 2002 audiogram and Dr. Buchholtz's January 8, 2003 audiogram, arriving at a stipulated binaural hearing loss of 34.3%. YX at 53–54.

Hearing Tests

On October 8, 2002, Dr. Norman F. Cantor evaluated Claimant's hearing at the request of his attorney ("the Cantor I audiogram"). YX at 73. At the time, Claimant reported buzzing, problems hearing the television, complaints from others that he set the television volume too high, and problems understanding others. YX at 73. Dr. Cantor found clear ear canals but thickened tympanic membranes and a history of tympanic tears corrected by surgery. YX at 74–75. Dr. Cantor stated Claimant's binaural hearing loss was 41.9%. YX at 76.

On January 8, 2003, Dr. Ben Buchholtz evaluated Claimant's hearing at the request of Centennial ("the Buchholtz audiogram"). YX at 62. Claimant reported problems discriminating words, hearing in groups, and hearing the television. YX at 62. Dr. Buchholtz found no evidence of aural infection, inflammation, or scar, and found a binaural hearing loss of 26.25%.

On January 2, 2004, licensed and certified audiologist Sheralyn Lewis evaluated Claimant's hearing at his request ("the Lewis audiogram"). CX at 2. At the Kaiser Permanente Medical Center, Claimant complained of additional problems hearing others and the television. YX 13 at 5 and Tr. at 39. After the test, Ms. Lewis explained the results to Claimant and provided him with a computer printout of the raw, unannotated audiogram. Tr. at 40 and CX at 1. Ms. Lewis then annotated her copy and presented it to Dr. Jo-Anne Higa Ebba. YX 13 at 29–30. At Claimant's lawyer's request, Dr. Ebba mailed Claimant's attorney a copy of the annotated audiogram and her additional evaluation. CX at 4. Dr. Ebba notes a "moderate to profound down-sloping high frequency hearing loss." CX at 4. The Lewis audiogram indicates a 50.83% binaural hearing loss.[2]

On March 5, 2004, Dr. Cantor again evaluated Claimant's hearing at his attorney's request ("the Cantor II audiogram"). RX at 1. Dr. Cantor found 38.1% binaural hearing loss and called this result "very similar" to his office's previous test. RX at 1.

On August 18, 2004, audiologist Roberta Berg evaluated Claimant's hearing at Yusen's request ("the Berg audiogram"). YX at 38–40. Ms. Berg found mild to severe binaural hearing loss. YX at 38–40. On November 17, 2004, Dr. Buchholtz reviewed this audiogram, and calculated Claimant's binaural hearing loss to be 31.5625%. YX at 34.

DISCUSSION

1. The January 4, 2004 Lewis Audiogram

Respondent Centennial argues that the Lewis audiogram is not presumptive of Claimant's hearing loss because a copy was not provided to him within thirty days. Under OWCP regulations,[3] an audiogram is a presumptive determination of the claimant's hearing on the date administered if, *inter alia*, a licensed or certified audiologist performed the audiogram, interpreted and certified it, and created a report describing the evaluation method and the reliability of the evaluation.[4] 20 C.F.R. § 702.441(b)(1). Additionally, the employee must have been provided with a copy of both the audiogram and the accompanying report within thirty days of the audiogram. 20 C.F.R. 702.441(b)(2).

Here, Ms. Lewis is a licensed and certified audiologist as required by the Act. At the time of the Lewis audiogram, Claimant received a copy of the actual audiogram and Ms. Lewis's verbal interpretation. Immediately afterward, Claimant went to his attorney to file the instant

[2] This figure is not listed on any of the Kaiser documents, but is cited on Claimant's closing brief at 3, Yusen's closing brief at 5, and Centennial's closing brief at 3.

[3] *Implementing* 33 U.S.C. § 908(c)(13).

[4] Certification standards for both audiologists and tests are set forth at 29 C.F.R. 1910.95(g). Audiometric standards are set forth in 29 C.F.R. 1910.95, Appendix C, available at:

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9738.

claim. A written report was unnecessary to put him on notice of his hearing loss under section 702.441. Thus, the lack of such a written report does not defeat the presumption. However, a written report is necessary to aid the court in determining the level of hearing loss and the reliability of the test.[5] But here, Claimant obtained and submitted the audiologist's written report prior to trial.[6] Because the Lewis audiogram was performed by a certified and licensed audiologist and accompanied a conforming report by the time it was entered into evidence, it meets the first two criteria under 20 C.F.R. § 702.441(b).[7]

Although the Lewis audiogram meets the first two criteria, if anyone produced a contrary audiogram at the same time, the Lewis audiogram will fail to be presumptive of Claimant's hearing loss. 20 C.F.R. 702.441(b)(3). A contrary audiogram is "at the same time" if it was taken within thirty days of the presumptive audiogram if noise exposure continues, or six months if noise exposure ceases. *Id.*

Here, the Lewis audiogram was performed by a certified audiologist, meets the Act's testing standards, and was provided to the Claimant at the time of the test. Unless controverted by a contrary audiogram within the proper time period, it is the presumptive audiogram for calculating hearing loss. Although Claimant does not allege that noise exposure continued after the presumptive audiogram, the parties stipulated and Claimant testified that he remained in the same job with the same noise exposure after the Lewis test. Because noise exposure continued, the thirty day time period applies. Neither the Cantor II nor the Berg audiogram was taken within the thirty day time period. Therefore, the Lewis audiogram is presumptive of Claimant's hearing loss as of that date.

However, even if the Lewis audiogram is not presumptive, it remains a reliable test of Claimant's hearing loss as of that date. In *Craig v. Avondale Industries, Inc.*, 36 BRBS 65, 67 (2002), the employer contended that the claimant's audiogram was invalid because it did not meet the section 702.441(b) presumptive standard because it was uninterpreted. However, the court disagreed: "Audiometric tests that do not meet the 'presumptive' standard are not invalid or inadmissible; it is for the [ALJ] to determine the probative value of such tests in determining the extent of the claimant's hearing loss *Id. citing generally Steevens v. Umpqua River Navigation*,

---

[5] In *Little v. Virginia International Terminals, Inc.*, 2001–LHC–1130, 1 (Huddleston 2002), the ALJ denied the claim based on an uninterpreted audiogram, explaining that the interpretation of audiograms was a "medical task" requiring some knowledge of the meanings of the numbers, symbols, and techniques used. *Id.* "Determining the extent of hearing loss based upon the raw data of an uninterpreted audiogram is clearly not within the authority, duty, or expertise of this court." *Id.* Therefore, the expert, evidentiary interpretation of audiograms is vital to the court and may happen anytime prior to or during trial.

[6] Centennial misapplies *Swain v. Bath Iron Works*, 18 BRBS 148 (1986). *Swain* does not stand for the proposition that an audiogram without a written accompanying report is invalid, but instead that the time for filing does not begin to run until the claimant has received an audiogram and accompanying report. 33 U.S.C. § 908(c)(13)(D). There, the claimant appealed the ALJ's decision that his hearing loss claim was time barred. *Id.* Applying the then new section 13(D), the court remanded stating, "there is no evidence in the record that he received a copy of the audiograms with accompanying report at any time prior to the filing of the claim." *Id.* Here, because Centennial has stipulated that Claimant's claim was timely, this argument has no effect.

[7] Centennial's statistical analysis is unconvincing because, *inter alia*, their argument does not persuade that merely inconsistent tests are also unreliable and (as in *Little*) effective evaluation of audiograms are medical tasks beyond the expertise of judges and lawyers. Without expert testimony to backup Centennial's analysis, it is speculation.

35 BRBS 129 (2001), and *Norwood v. Ingalls Shipbuilding, Inc.*, 26 BRBS 66 (1992). The Board denied the employer's motion for reconsideration of the earlier decision. 36 BRBS at 68.

Here, Claimant received an audiogram from a licensed and certified audiologist; he understood the implications of the test; he sought the advice of counsel on the matter; he asserted the instant claim; and he provided a valid interpretation before the hearing. Even if the Lewis audiogram were to fail to meet the section 702.441(b) presumption, it remains a reliable test of Claimant's hearing as of that date.

2. Extent of Claimant's Increased Hearing Loss

Respondent Centennial contends that the Cantor II and Berg audiograms are more reliable than the Lewis audiogram, and should instead be used to fix Claimant's hearing loss for purposes of compensation. In *Smith v. Northwest Marine Ironworks*, 24 BRBS 265, 266 (ALJ 1991), a coworker threw a firecracker into the locker room where the claimant was changing. The discharge caused the claimant hearing trouble for which he received two audiograms. *Id.* at 267. The first, about one year later, showed 32% impairment and the second, about three months after that, showed 0% impairment. *Id.* Under section 702.441(b)(3), the ALJ found that the claimant continued to work in a noisy environment and therefore applied the thirty day time period. The ALJ also found that the latter audiogram failed to defeat the initial audiogram's presumption. *Id.* at 267–268. However, the ALJ continued, finding that even though the second audiogram did not meet the exact criteria of the Act, it was more reliable than the former audiogram. *Id.* at 269. Because the later audiogram rebutted the presumption, the ALJ denied benefits to the claimant. *Id.* at 271.

In *George v. Electric Boat Corporation*, 38 BRBS 154 at 155 (ALJ, 2004), the parties stipulated that the claimant's hearing loss was at least partially the respondent's responsibility. Although the claimant took several audiograms before, during, and after his employment, only two were timely measurements of the claimant's hearing or met the requirements of section 702.411. *Id.* at 158–59. Although the two audiograms were seven months apart, because certified audiologists performed each of these tests, they were entitled to substantial and equal weight. *Id.* at 160. Because neither test was superior under the Act, the Board awarded the claimant an average of the results. *Id.*

Here, both subsequent audiograms show a lower level of hearing loss than the Lewis audiogram. The Cantor II audiogram was performed by a certified audiologist, was properly explained and annotated, and presumably meets the technical criteria of the Act. Although Respondent Yusen urges that this audiogram should not be considered because Dr. Cantor did not review the results with Claimant, it was Claimant's own attorney who ordered the audiogram in the first place and his results appear in a letter to the Claimant's attorney. All parties have deferred to Dr. Cantor as reliable: Claimant based his prior claim on the Cantor I audiogram, Respondent Centennial urges the reliability of the Cantor II audiogram, and Respondent Yusen does not dispute Dr. Cantor's reputation or the technical matter in the audiogram. Therefore the Cantor II audiogram is at least as reliable as the Lewis audiogram.

As to the Berg audiogram, Centennial presents it as a rebuttal to the prior audiograms. Neither Claimant nor Yusen argue technical problems with either the audiogram or Dr.

Buchholtz's interpretation of its results. Both Centennial and Claimant stipulated to using the Buchholtz audiogram in the previous case. Because it was performed by a certified audiologist, contained a conforming evaluation, and no parties contend it is not reliable, the Berg audiogram is at least as reliable as the previous two. None of these tests is technically superior, thus they are entitled to substantial and equal weight. Therefore, the best measure of Claimant's hearing for purposes of compensation is an average of the three. The average of 50.83%, 38.1%, and 31.5625% is 40.16%, which I find to be the extent of Claimant's hearing loss for purposes of compensation hereunder.

3. Causation and Last Responsible Employer

Respondents each contend that they are not the responsible employer. Pursuant to Section 20(a) of the Act, the ALJ must presume that the injury arose from the claimant's employment if he shows that he suffered a physical harm and working conditions existed which could have caused that harm. *Rajotte v. General Dynamics Corp.*, 18 BRBS 85, 86 (1986) *citing Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). In order to invoke the presumption, the claimant need not prove actual harm, but only that working conditions existed which could have caused the harm. *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148, 151 (1989).

In *Damiano v. Global Terminal & Container*, 32 BRBS 261, 262 (1998), the employer claimed that the ALJ erred in not finding that evidentiary noise analyses were sufficient to overcome the presumption. The Board stated that once the presumption is invoked, the employer must rebut the presumption "with substantial countervailing evidence sufficient to establish no causal connection between [the claimant's] hearing loss and his employment." *Id. citing Bridier v. Ala. Dry Dock & Shipbuilding Co.*, 29 BRBS 84 (1995). The Board affirmed because respondent's own noise reports established a threshold sufficient for concern and did not rebut the claimant's allegations. 32 BRBS at 263.

Finally, if the respondent's evidence is insufficient to rebut the presumption, the claimant's injury is found to be caused by his employment as a matter of law. *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252, 256 (1988) *citing Taylor v. Smith and Kelly Co.*, 14 BRBS 489 (1981).

Here, Claimant alleges an injury and noise exposure. At least two tests show that his hearing has deteriorated from the level stipulated to in the prior case. Respondent Centennial does not refute these allegations. Therefore, Claimant has shown injury. Additionally, Claimant worked for Centennial for a number of years prior to the Lewis audiogram. Respondents do not controvert either that Claimant did work as a gate clerk, or that gate clerks are regularly exposed to noise. Claimant has shown the possibility that his injury was caused by working as a gate clerk employed by Centennial. Therefore, the section 20(a) presumption applies and Claimant's work at Centennial caused the subject injury as a matter of law.

Notwithstanding causation, if Respondent Centennial is the "last responsible employer," it will be liable for Claimant's injury. In *Port of Portland v. Director, OWCP* (*Ronne*), 932 F.2d 836, 837 (9th Cir. 1990), the claimant had worked for the Port for only four days before filing a hearing-loss claim under the Act. One issue before the court was whether the Port or the

claimant's prior employer was liable under the Act as the "last responsible employer." *Id.* at 840. The court applied the *Cardillo* rule:

> [T]he employer during the last employment in which claimant was exposed to injurious stimuli, prior to the date upon which the claimant became aware of the fact that he was suffering from an occupational disease arising naturally out of his employment, should be liable for the full amount of the award.

Id., citing *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1337 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979) (adopting the rule from *Travelers Insurance Co. v. Cardillo*, 225 F.2d 137 (2d Cir. 1955)).

Nevertheless, the court rejected any reading of *Cardillo* that imposed liability on an employer "who could not, even theoretically, have contributed to the causation of the disability." *Ronne* at 841. Because the claimant had only worked at the Port for four days, the court found it impossible for his work there to have contributed in any way to his injury. *Id.* at 840. Therefore, the court found the claimant's prior employer was liable. *Id.* at 842. *See also Stevedoring Services of America v. Director, OWCP*, 297 F.3d 797 (9th Cir. 2002) (applying *Cardillo* to a hearing loss case as an "occupational disease.")

Here, Centennial was Claimant's most recent employer prior to the Lewis audiogram. Claimant states that he was exposed to many sources of noise while employed as a gate clerk at Centennial. Claimant became officially aware of diminished hearing on January 4, 2004, years after Claimant was employed almost exclusively by Centennial. Although Yusen employed Claimant afterward, both subsequent audiograms showed Claimant's hearing improved as soon as two months after he began working for Yusen. These improved hearing scores show he could not possibly have incurred the claimed injury while under Yusen's employ. Because noise levels at Centennial could have caused the impairment, the impairment arose naturally out of his employment and Centennial is the last responsible employer.

4. Credit

Respondent Centennial claims a credit in the amount of Claimant's recovery under the prior case. In *Strachan Shipping Co. v. Nash, Director OWCP*, 782 F.2d 513, 514 (5th Cir. 1986), the employee had reported two separate injuries in a prior case: a high school injury produced a 20% impairment of his right knee and a longshore injury produced a 10% impairment of the same knee. Under the aggravation doctrine, the employee could have recovered for the full 30% impairment under the Act. *Id.* at 515. However, the employee settled *in pro per* with his then employer, recovering for only the 10% impairment. *Id.* at 516.

Later, the employee injured the same knee while working as a longshoreman, producing a further 4% injury. *Id.* at 514. His new employer argued that after prior litigation, impairment credits should be based on compensation that the employee "could have or should have" recovered under the Act. *Id.* at 517. However, the court disagreed stating that the Act must be construed liberally in favor of longshoremen because it represents a compromise "by which the employee receives a much smaller recovery than [in tort]" in exchange for quicker, less

expensive litigation. *Id.* at 518 *citing Bludworth Shipyard, Inc. v. Lira*, 700 F.2d 1046 (5th Cir. 1983). However, in order to avoid double recovery in claims for additional injuries, the Board developed the "credit doctrine," granting credit to employers for the portion of a covered injury already recompensed and actually received under the Act. 782 F.2d at 517 and 522. Therefore, the court affirmed the Board's award of compensation for a 24% injury, crediting the employer money paid on the 10% longshore injury. *Id.* at 522.

Here, $3,700 of Claimant's stipulated recovery in the prior case was earmarked "a lien against compensation" that Claimant was to make to his attorney. This lien was over and above the $3,700 paid by Centennial in attorney's fees. In other words, the Claimant and Centennial were splitting the cost of his attorney. Claimant contends that the so-called *Nash* credit should be reduced by the amount he paid his own attorney, creating a credit of $60,350.44. As Claimant rightly states, the point of the credit is to avoid double recovery. Here, however, Claimant received $64,050.44 for his recovery of the first injury. That he had to pay his attorney and that the parties agreed to a lien to ensure payment does not reduce the amount Claimant himself recovered from the employer. Granting a credit for the lien amount is counter to the parties' agreement to split Claimant's attorney fees. Therefore, the credit must not be reduced by the lien amount.

Centennial argues that they should be credited $64,050.44 for Claimant's recovery in the prior case. Because that was the amount he recovered for his earlier hearing loss, that is the amount Centennial must be credited here.

5. Interest

Claimant requests an award of interest on all amounts due from the date of injury. The Act provides that where the injury results in disability which lasts for more than fourteen days, compensation is allowed from the date of the disability. 33 U.S.C. § 906(a). In *Brown v. Alabama Dry Dock and Shipbuilding Corp.*, 28 BRBS 160, 161–62 (1994), the employer contested the ALJ's award of interest on past-due benefits under the Act. The Board stated:

> Although interest is not specifically addressed in the Act, the courts and the Board have held that an award of interest on past-due compensation serves the humanitarian purpose of the Act by making a claimant whole for his work-related injury, as the employer had the use of the money until an award was issued. *Id.* at 162, *citing, inter alia, Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984).

The Board also found that ALJ's have the authority to award interest under the Act. *Id.* at 163. The Board affirmed. *Id.* at 165. Here, Claimant officially knew of his injury on January 4, 2004. Therefore, any unpaid benefits due to Claimant after that date are subject to interest.

ORDER

It is therefore **ORDERED** that:

1. Respondent Yusen is not liable.

2. Claimant's permanent partial disability is comprised of a 40.16% binaural hearing loss.

3. Claimant is entitled to recovery for 80.32 weeks[8] at $1,030.78 per week[9] totaling $82,792.25.

4. Respondent Centennial is entitled to a credit in the amount of $64,050.44.

5. Claimant's total compensation under this order is $18,741.81.

6. Respondent Centennial shall pay interest on the total award based on the weekly average one year constant maturity Treasury yield as published by the Federal Reserve System for the week preceding the date of judgment.[10]

7. Within thirty days of receipt of this decision and order, Claimant's attorney shall file a fully supported and itemized fee petition and shall serve a copy thereof on Centennial's counsel. Centennial's counsel shall then have ten days to respond.

A

Russell D. Pulver
Administrative Law Judge

[8] Based on 33 U.S.C. 906(c)(13)(B), total hearing loss entitles the claimant to 200 weeks of compensation, 80.32 is 40.16% thereof.

[9] Parties had previously agreed to this figure. *See* stipulations, *supra*.

[10] *See* http://www.dol.gov/esa/owcp/dlhwc/lsinterest.htm.